

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 249

THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF COLUMBUS, OHIO; BEREAL COLLEGE, AND THE AMERICAN MISSIONARY ASSOCIATION, PETITIONERS,

vs.

ORA DAVIS ET AL.

ON CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

FILED MARCH 26, 1929

(29,464)

V

(29,465)

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[fol. a] **SUPREME COURT OF THE STATE OF OHIO,**
JANUARY TERM, A. D. 1922

MINUTE ENTRIES

(Minute Book No. 36, Page 469)

Number 17369

Title of Case

THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF COLUMBUS, OHIO,
 Berea College, and The American Missionary Association, Plaintiffs in Error,

v.

ORA DAVIS, WILLIAM METCALF, GREENLAWN CEMETERY ASSOCIATION, M. B. Cooper, Annie Helwig, John D. Evans, Sarah Lewis, Mary Wright, Lynn Wright, Ellen Jones, John E. Sater, as Executor and as Trustee under the Will of Mary J. Sessions, Deceased; Helen Metcalf, Juliette Sessions, Elizabeth Sessions, as Administratrix of the Estate of Harriet Sessions, Deceased; The Board of Education of the City School District of Columbus, Ohio; The Columbus Art Association, and The Young Men's Christian Association of Columbus, Ohio, Defendants in Error.

Attorneys: Booth, Keating, Pomerene & Boulger; Webber & Jones; C. A. McCleery, Columbus; Guy W. Mallon, Cincinnati, Ohio, for plaintiffs in error; Vorys, Sater, Seymour & Pease; Leach & McCormick; Morton, Irvine & Blanchard; James M. Butler, Luther L. Boger, Columbus, Ohio, for defendants in error.

Action: Motion for an order directing the Court of Appeals of Franklin County to certify its record.

Error to the Court of Appeals of Franklin County

Transcript of Docket Entries, Memoranda of Pleadings, etc., Filed, Writs Issued, Judgments, Orders, and Decrees

1922.

Feb. 2. Motion for an order directing the court of appeals to certify record and acknowledgment of notice and waiver, filed.

" 8. Plaintiff's printed briefs on motion and proof of service filed.

March 2. Printed brief of John E. Sater, Executor, on motion (12) filed.

" 3. Proof of service filed.

March 21. Motion for an order directing the Court of Appeals of Franklin County to certify its record, allowed. Journal No. 29, page 137.

“ 21. Order No. 448 issued to Clerk of Court of Appeals to certify record.

April 5. Petition in error and waiver of summons filed.
 “ Court of appeals certificate and transcript filed.
 “ Original papers filed.
 “ 6. Papers taken by Spahr & Glenn.
 “ 26. Printed record and proof of service filed.

June 15. Plaintiff's printed briefs filed. June 16, 1922, proof of service filed.

July 14. Printed briefs of John E. Sater, *Executrix*, filed. July 17, 1922, proof of service filed.

[fol. b]

Aug. 9. Plaintiff's printed reply briefs filed. Aug. 9, 1922, proof of service filed.

Oct. 25. Papers returned by Spahr & Glenn.

Dec. 29. Judgment affirmed. Journal No. 29, page 329.
 1923.

Jan. 8. Mandate issued.

Feb. 2. Original papers sent to Clerk.

March 5. Certificate of Chief Justice as to federal question filed.
 “ “ Certified copy of opinion filed.

[fol. e]

IN THE SUPREME COURT OF OHIO

TRANSCRIPT OF JOURNAL ENTRIES

1922.

March 21. Motion for an order directing the Court of Appeals of Franklin County to certify its record:

“It is ordered by the court that this motion be, and the same hereby is, allowed.” Journal No. 29, page 139.

Dec. 29. “This cause came on to be heard upon the transcript of the record of the Court of Appeals of Franklin County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said court of appeals be, and the same is hereby, affirmed; and it appearing to the court that there were reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed herein. It is further ordered that the defendants in error recover from the plaintiffs in error their costs herein expended, taxed at \$—.

“Ordered, that a special mandate be sent to the Court of Appeals of Franklin County to certify its record.” Journal No. 29, page 329.

[fol. d] **STATE OF OHIO**
City of Columbus:

SUPREME COURT OF THE STATE OF OHIO, January Term, A. D. 1923

CLERK'S CERTIFICATE

I, Seba H. Miller, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing is a true and correct transcript of the docket and journal entries in the foregoing named case, wherein The Young Men's Christian Association of Columbus, Ohio, et al., are plaintiffs in error, and Ora Davis et al., are defendant in error, taken and copied from Minute Book and Journal of the Records of said Court.

I further certify that the printed copy of the record hereto attached is a true and correct copy of the record in said cause filed in said Supreme Court of Ohio.

In witness whereof, I have hereunto subscribed my name and affixed the Seal of said Supreme Court this 6th day of March, A. D. 1923.

Seba H. Miller, Clerk Supreme Court. [Seal of the Supreme Court of the State of Ohio.]

[fol. e] **IN THE SUPREME COURT OF OHIO**

[Title omitted]

CERTIFICATE OF THE CHIEF JUSTICE OF THE SUPREME COURT OF OHIO

In the foregoing cause I hereby certify that the plaintiffs in error claimed the right and privilege of freedom from contribution to and immunity from the incidence of the federal estate tax (40 U. S. Statutes 1096 et seq.). Said federal tax was paid by John E. Sater as executor, and plaintiffs in error, as corporations organized and operated exclusively for religious, charitable and educational purposes, claimed that under paragraph 3 of section 403 of the federal estate tax law of 1918 (40 U. S. Statutes 1098) no part of said tax could be collected from them, as the statute last cited conferred upon them immunity from contribution to or the payment of said tax. The petition in error of plaintiffs in error was dismissed by a decision against the said title, right, privilege and immunity, which was specially set up and claimed by plaintiffs in error.

This certificate is made as explanatory of the record.

Dated this 5th day of March, 1923.

Carrington T. Marshall, Chief Justice of the Supreme Court of the State of Ohio.

[fol. f]

IN THE SUPREME COURT OF OHIO

[Title omitted]

OPINION, WANAMAKER, J.

1. The tax or excise provided for by the Federal Act of 1918, entitled an "Estate Tax," is a legal charge made upon the decedent's estate and his right to transmit it either by will or by law as an intestate.
2. The charges imposed by law upon an estate must first be paid out of the estate as a whole, before payment of the charges imposed upon the estate by the will of the testator.
3. A residuary devisee or legatee is presumed in law to be in the position of the last lienholder, after all prior lawful claims and charges have been satisfied out of the estate.

(No. 17369. Decided December 29, 1922)

Error to the Court of Appeals of Franklin County

Mary J. Sessions died April 1, 1919, leaving a last will and testament, whereby she undertook to dispose of a large estate. By her will she made numerous specific bequests and devises to relatives and friends, and then by residuary clause gave "all the rest, residue, and remainder," of her estate to certain charitable, religious, and educational institutions, including the plaintiffs in error.

Hon. John E. Sater was named executor and trustee under the will. He filed his petition in the court of common pleas for construction of the will, and for the advice and direction of the court as to the federal estate tax and the distribution of the assets of the estate, and various other matters pertaining to his duties as such [fol. g] executor and trustee.

All parties being before the court, the cause was heard, argued, and submitted, whereupon the court found "that the federal estate tax is a debt against the estate of said decedent which must be paid by the executor out of the general assets of the estate before making any distribution among the residuary legatees * * *; that the legatees and devisees in the will are entitled to receive their respective bequests and devises in full, and free from the payment of said estate tax, unless necessary to pay debts," etc.

The residuary legatees appealed the cause to the court of appeals, which found and entered the same judgment as the court of common pleas.

Error is now prosecuted to this court to reverse the judgments below.

Messrs. Webber & Jones; Mr. C. A. McCleary; Mr. Guy Mallon and Messrs. Booth, Keating, Pomerene & Boulger, for plaintiffs in error.

Messrs. Vorys, Sater, Seymour & Pease; Mr. James M. Butler; Mr. L. M. Boger; Mr. Chas. A. Leach; Messrs. Arnold, Game & Wright and Messrs. Morton, Irvine & Blanchard, for defendants in error.

WANAMAKER, J.:

The single question in this case is whether the executor, who has paid the federal tax from the general assets of the estate in his hands, shall collect the amount of that tax from the specific devisees and legatees in the respective portions of their several devises and bequests, or shall deduct it, together with other charges, debts and costs [fol. h] of administration, from the total assets, in finding the "rest, residue and remainder" of the estate bequeathed to the residuary legatees.

The charges made against an estate may be generally divided into two classes.

First. Those that the decedent charges through his will in favor of devisees and legatees.

Second. Those that the law charges in favor of the public or the various political subdivisions thereof.

It is elementary of course that the latter class is prior and paramount in character, and it becomes important, therefore, to first ascertain the nature of the charge in question.

The federal statute involved denominates the federal legal charge as an "estate tax," and that charge obviously becomes fixed immediately upon the death of a person having an estate subject to such tax. All the provisions of the act are consistent with his denomination.

The language of the act, Section 401 (40 Stats. at Large, 1096), clearly shows that the tax "is hereby imposed upon the transfer of the net estate," after all legal charges have been deducted, that is, charges imposed by law, together with such additional charges as provisions of the statute itself include in the ascertainment of the net estate.

In short, it was the plain purpose to enact a revenue raiser, which should impose a charge or excise upon the decedent's right to direct or control the transfer of his estate, either under his will, or under [fol. i] the law.

It was therefore not an inheritance tax. It had no relation whatsoever, so far as herein involved, to any charge upon any devise or legacy, or the right of any person, natural or artificial, to take, hold or receive any portion of an estate.

In this view of the case, the estate must be considered as a whole, without regard to the nature, character, or amount of the legacies or bequests.

In the distribution of property agreeably to the will it is elementary of course that the testator may, in a large measure, determine the priority in which his several bounties may be distributed, and in so doing it is to be presumed that a legacy specific as to the

person, thing, or amount, shall have priority over a mere general provision; especially, from its very nature, over all residuary devises and legacies.

It would be a strange legal paradox, indeed, to hold residuary devises, legacies or bounties prior to those that are express and specific. The plaintiffs in error are designated for the first time in Item 10, after all specific devises and legacies have been provided for, in the following language: "All the rest, residue, and remainder of my estate and property, real, personal and mixed, of every nature and description, or wheresoever situate, * * * I give, devise and bequeath to The Young Men's Christian Association," etc. This fact affords a clear and conclusive presumption that all charges imposed by the law or by the testator should be paid out of the estate before [fol. j] any right should ripen in behalf of the residuary devisees or legatees under this item.

This view supports the undoubted intention of the testator in the making of the will in all its various provisions, as well as the plain provisions of the federal statute. It is unnecessary to refer to this statute further than to quote a few lines from Section 408 (40 Stats. at Large, 1100):

"It being the purpose and intent of this title that so far as is practicable, and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution."

The above view of the case is supported by a number of decisions, among which are *In re Hamlin*, 226 N. Y., 407; *Plunkett v. Old Colony Trust Co.*, 233 Mass., 471; *United States v. Perkins*, 163 U. S. 625, and *People v. Bemis et al.*, Exrs., 68 Colo., 48.

The decision generally urged to hold the contrary doctrine relates basically to an inheritance tax, the right to receive rather than the right to transmit.

Judgment of the court below is affirmed.

Judgment affirmed.

Marshall, C. J., Hough, Robinson, Jones, Matthias and Clark, JJ., concur.

[fol. k] STATE OF OHIO,
City of Columbus:

SUPREME COURT OF THE STATE OF OHIO, OF THE TERM OF JANUARY,
A. D. 1922

REPORTER'S CERTIFICATE

I, J. L. W. Henney, Reporter of the Supreme Court of Ohio, do hereby certify that the foregoing transcript, consisting of — (—) pages, constitutes a full, true and correct copy of the original opinion of the Supreme Court of Ohio in the case of *The Young Men's Christian Association et al. v. Ora Davis et al.*, as the same appears on file and of record in this office, as of the date of this certificate.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said Supreme Court this second day of March, A. D., 1923.

J. L. W. Henney, Reporter. (Seal of the Supreme Court of the State of Ohio.)

[fol. 1]

SUPREME COURT OF OHIO

No. 17369

[Title omitted]

PETITION IN ERROR—Filed April 5, 1922

Plaintiffs in error say that at the January term of the Court of Appeals of Franklin County, Ohio, to-wit, on the 18th day of January, 1922, all of the defendants in error, save and except The Young Women's Christian Association of Columbus, Ohio, recovered a judgment and decree, by consideration of said Court of Appeals, against plaintiffs in error in an action pending therein, wherein John E. Sater, as Executor of the last will and testament of Mary J. Sessions, deceased, was plaintiff, and plaintiffs in error and all of the defendants in error, save and except said John E. Sater as Executor of said last will and testament, were defendants; said action having been brought by said John E. Sater as said Executor for the purpose of obtaining the judgment of the court determining the manner in which the payment of taxes, and especially the federal estate transfer tax, and costs and expenses incurred by him in the administration of his duties as said Executor, should be apportioned among the legatees and devisees named in said last will and testament of said Mary J. Sessions, deceased. A transcript of the docket and journal entries and the original papers in said cause are filed herewith.

There is error in said record and proceedings in this, to-wit:

(1) Said court erred in overruling the separate motions of each of plaintiffs in error for a new trial.

(2) Said court erred in rendering judgment against plaintiffs in error and in favor of the specific legatees and devisees under said last will and testament, said specific legatees and devisees being defendants in error herein.

(3) Said court erred in finding, decreeing and adjudging that the said federal estate transfer tax was a debt of the estate of said Mary J. Sessions, deceased, and as such must be paid by said executor out of the general assets of the estate before making distribution to plaintiffs in error and subsequent to making distribution to the specific devisees and legatees, defendants in error.

(4) Said court erred in finding, adjudging and decreeing that defendants in error who received specific legacies and devises under said last will and testament of Mary J. Sessions, deceased, were entitled to receive their respective legacies and devises in full, free from the payment of said federal estate transfer tax or any part thereof.

(5) Said court erred in decreeing and adjudging that said John E. Sater, as Executor aforesaid, should not charge to or collect from any of the legatees or devisees, under the will of said Mary J. Sessions, deceased, other than plaintiffs in error and The Young Women's Christian Association of Columbus, Ohio, any amounts paid by him on account of said federal estate transfer tax.

(6) Said court erred in decreeing and adjudging that the costs and expenses of administration of said estate were not chargeable against the specific legatees and devisees, and that only the residuum of said estate of Mary J. Sessions, deceased, after the payment of all said costs and expenses, was payable to plaintiffs in error.

(7) Said court erred in not finding and decreeing that plaintiffs in error and The Young Women's Christian Association of Columbus, Ohio, were exempt from paying or contributing to the payment of the federal estate transfer tax.

Wherefore, plaintiffs in error pray that said judgment of the Court of Appeals may be reversed, that they may be restored to all things [fol. 4] they have lost by reason thereof, and that this court render the judgment that should have been rendered by the court below.

The Young Men's Christian Association of Columbus, Ohio, By Webber and Jones, and C. A. McCleary, Its Attorneys. Berea College, By Guy O. Mallon and Booth, Keating, Pomerene and Boulger, Its Attorneys. The American Missionary Association, By Booth, Keating, Pomerene and Boulger, Its Attorneys.

IN SUPREME COURT OF OHIO

WAIVER OF SUMMONS, ETC.

Defendants in error waive the issuance and service of summons and voluntarily enter their appearance herein.

Vorys, Sater, Seymour and Pease, Attorneys for John E. Sater, Trustee and Executor, M. B. Cooper, Sarah Lewis, Juliette Sessions, et al.; James M. Butler and L. L. Boger, for Mrs. Metcalf. The Board of Education of the City School District of Columbus, Ohio, By Chas. A. Leach, Attorney. The Columbus Art Association, By Arnold, Game and Wright. Young Women's Christian Association of Columbus, By Morton, Irvine and Blanchard.

[fol. 5]

Record in Court of Appeals**CLERK'S CERTIFICATE**

STATE OF OHIO,
Franklin County, ss:

In obedience to the commands of Order No. 448 issued by the Supreme Court of Ohio pursuant to an application made by The Y. M. C. A. et al., asking that the Court of Appeals of Franklin County be directed to certify its Record in the above entitled cause to the said Supreme Court of Ohio, I do hereby certify that attached hereto are duly certified transcripts of the docket and journal entries of the Court of Common Pleas and of the Court of Appeals in said cause; and all of the original papers, including the pleadings and bill of exceptions, filed in the Court of Common Pleas in said cause, and all of the original papers filed in the Court of Appeals in said cause, the same being numbered from one to —; and a duly certified copy of the opinion of the Court of Appeals in said cause; all of which are herewith transmitted to the said Supreme Court of Ohio.

In testimony Whereof, I have hereunto subscribed my name as Clerk of the Court of Appeals, and have attached hereto the Seal of said Court at Columbus, Ohio, this 29th day of March, A. D. 1922.

Harold C. Goekenbach, Clerk of the Court of Appeals in and for Franklin County, Ohio, By Herman Maass, Deputy.
[Seal.]

[fol. 6] **IN COURT OF APPEALS OF FRANKLIN COUNTY****TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES**

1921, July 29.—Appeal Bond filed.

1921, July 29.—Transcript of Docket and Journal Entries filed. Twenty-three (23) Original Papers filed as follows, to-wit: Petition, 10 Entries of Appearance, 4 Motions, Reply, 3 Entries, Copy of Entry, 2 Briefs.

1921, September 10.—Motion to advance filed.

1921, October 1.—Three Briefs of Plaintiff filed.

1922, January 18.—Motion of Y. M. C. A. for new trial filed.

1922, January 18.—Motion of Y. W. C. A. for new trial filed.

1922, January 18.—Motion of Berea College for a new trial filed.

1922, January 18.—Motion of American Missionary Association for a new trial filed.

1922, January 18.—Finding and Decree as per Entry.

IN COURT OF APPEALS OF FRANKLIN COUNTY

MOTIONS FOR NEW TRIAL

Defendant, The American Missionary Association, moves that the Court vacate, set aside and hold for naught the judgment heretofore rendered in this cause and grant said defendant a new trial for the following reasons, to-wit:

1. The Court erred in finding that the Federal Estate Tax was a debt against the estate of said decedent which must be paid by the executor out of the general assets of the estate before making distribution to this defendant.

[fol. 7] 2. The Court erred in finding that the specific legatees and devisees are each entitled to receive their respective bequests and devises free from the payment of said Federal Estate Tax.

3. The Court erred in finding that the executor shall not charge to or collect from any of the legatees or devisees under the will of Mary J. Sessions, deceased, other than the residuary legatees, the Young Men's Christian Association, the Young Women's Christian Association, Berea College and the American Missionary Association, the amounts paid by him for said Federal Estate Tax.

4. The Court erred in holding that the costs of this *section* should not be paid by the specific legatees and devisees named in said will.

5. The construction placed upon the federal estate tax by the Court in its judgment is contrary to law.

6. The Court erred in not exempting this defendant from contribution to, the payment of, or the assessment against it by the executor, of any part of said Federal Estate Tax.

7. The judgment of the Court is contrary to law.

Booth, Keating, Pomerene & Boulger, Attorneys for said Defendant.

Defendant, The Young Women's Christian Association of Columbus, Ohio, moves that the Court vacate, set aside and hold for naught the judgment heretofore rendered in this cause and grant said defendant a new trial for the following reasons, to-wit:

1. The Court erred in finding that the Federal Estate Tax was a debt against the estate of said decedent which must be paid by the executor out of the general assets of the estate before making distribution to this defendant.

[fol. 8] 2. The Court erred in finding that the specific legatees and devisees are each entitled to receive their respective bequests and devises free from the payment of said Federal Estate Tax.

3. The Court erred in finding that the executor shall not charge to or collect from any of the legatees or devisees under the will of

Mary J. Sessions, deceased, other than the residuary legatees, the Young Men's Christian Association, the Young Women's Christian Association, Berea College and the American Missionary Association, the amounts paid by him for said Federal Estate Tax.

4. The Court erred in holding that the costs of this action should not be paid by the specific legatees and devisees named in said will.

5. The construction placed upon the federal estate tax by the Court in its judgment is contrary to law.

6. The Court erred in not exempting this defendant from contribution to, the payment of, or the assessment against it by the executor, of any part of said Federal Estate Tax.

7. The judgment of the Court is contrary to law.

Morton, Irvine & Blanchard, Attorneys for said Defendant.

Defendant, Berea College, moves that the Court vacate, set aside and hold for naught the judgment heretofore rendered in this cause and grant said defendant a new trial for the following reasons, to-wit:

1. The Court erred in finding that the Federal Estate Tax was a debt against the estate of said decedent which must be paid by the executor out of the general assets of the estate before making distribution to this defendant.

[fol. 9] 2. The Court erred in finding that the specific legatees and devisees are each entitled to receive their respective bequests and devises free from the payment of said Federal Estate Tax.

3. The Court erred in finding that the executor shall not charge to or collect from any of the legatees or devisees under the will of Mary J. Sessions, deceased, other than the residuary legatees, the Young Men's Christian Association, the Young Women's Christian Association, Berea College and the American Missionary Association, the amounts paid by him for said Federal Estate Tax.

4. The Court erred in holding that the costs of this action should not be paid by the specific legatees and devisees named in said will.

5. The construction placed upon the federal estate tax by the Court in its judgment is contrary to law.

6. The Court erred in not exempting this defendant from contribution to, the payment of, or the assessment against it by the executor, of any part of said Federal Estate Tax.

7. The judgment of the Court is contrary to law.

Guy Mallon and Booth, Keating, Pomerene & Boulger, Attorneys for said Defendant.

Defendant, The Young Women's Christian Association of Columbus, Ohio, moves that the Court vacate, set aside and hold for naught

the judgment heretofore rendered in this cause and grant said defendant a new trial for the following reasons, to-wit:

1. The Court erred in finding that the Federal Estate Tax was a debt against the estate of said decedent which must be paid by the [fol. 10] executor out of the general assets of the estate before making distribution to this defendant.
2. The Court erred in finding that the specific legatees and devisees are each entitled to receive their respective bequests and devises free from the payment of said Federal Estate Tax.
3. The Court erred in finding that the executor shall not charge to or collect from any of the legatees or devisees under the will of Mary J. Sessions, deceased, other than the residuary legatees, the Young Men's Christian Association, the Young Women's Christian Association, Berea College and the American Missionary Association, the amounts paid by him for said Federal Estate Tax.
4. The Court erred in holding that the costs of this action should not be paid by the specific legatees and devisees named in said will.
5. The construction placed upon the federal estate tax by the Court in its judgment is contrary to law.
6. The Court erred in not exempting this defendant from contribution to, the payment of, or the assessment against it by the executor, of any part of said Federal Estate Tax.
7. The judgment of the Court is contrary to law.

Webber & Jones, and C. A. McCleary, Attorneys for said Defendant.

IN COURT OF APPEALS OF FRANKLIN COUNTY

ENTRY OF FINDINGS AND JUDGMENT

This day this cause came on to be heard upon the petition and the copy of the will attached thereto, which was agreed to be a full and true copy of such will, and all of the defendants having voluntarily entered their appearance in said cause, the same was argued by coun-[fol. 11] sel and submitted to the court, and the court being fully advised, finds that the federal estate tax a debt against the estate of said decedent which must be paid by the Executor out of the general assets of the estate before making any distribution among the residuary legatees, namely, American Missionary Association, Berea College, The Young Men's Christian Association of Columbus, Ohio, and the Young Women's Christian Association of Columbus, Ohio; that the legatees and devisees in the will who received specific legacies and devises under the will, are entitled to receive their respective bequests and devises in full, and free from the payment of said estate tax, unless necessary to pay debts, and that the Executor shall not

charge to or collect from any of the legatees or devisees under the will, other than said residuary legatees, any amounts paid by him for said federal estate tax.

The Court further finds that the costs and expenses of administration are payable out of the general funds in the hands of the executor and are not chargeable against devisees and legatees of specific devises or bequests, and the residuum only, after payments of all such costs and expenses, is payable to the residuary legatees; but for expenses of repairs, improvements, insurance, taxes and assessments incurred since the death of the testatrix upon the real estate specifically devised, and the charges for services in collecting the rents and making leases and keeping the property in repair, and other similar services respecting said real estate, are not charges against the general assets in the hands of the Executor, but the Executor should charge to and collect from the respective devisees of specific real estate the expenses so incurred by him and the charges for his services [fol. 12] on behalf of the respective devisees, each devisee to pay to the Executor the amount of expense incurred and the charge for services made by the Executor with respect to such devisee's property.

Said petition is dismissed as to the request marked "D," relating to the collateral inheritance tax law of Ohio, on the ground that this court in this proceeding has no jurisdiction of such question.

To which findings and judgment of the court said defendants, The American Missionary Association, Berea College, The Young Men's Christian Association of Columbus, Ohio, and the Young Women's Christian Association of Columbus, Ohio, and each of them jointly and severally except.

And thereupon the defendants, The American Missionary Association, Berea College, The Young Men's Christian Association of Columbus, Ohio, and The Young Women's Christian Association of Columbus, Ohio, each filed its separate motion for a new trial and the same was submitted to the Court, and the Court overruled each of said motions, to which each of said parties at the time excepted.

It is ordered and adjudged by the court that said executor pay the costs of this action out of the general assets of said estate; to which the American Missionary Association, Berea College, The Young Men's Christian Association of Columbus, Ohio, and The Young Women's Christian Association of Columbus, Ohio, each severally and separately excepted.

[Duly certified.]

[fol. 13]

Record Court Common Pleas

TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES

1921, March 28.—Petition and Affidavit filed. Copy, \$2.00.

1921, April 9.—Waiver of Mary Wright, L. W. Wright, Helen W. Jones and Sarah Lewis filed and appearance entered herein.

1921, April 13.—Waiver of the American Missionary Association filed and appearance entered.

1921, April 13.—Waiver of Berea College filed and appearance entered by Mallon and Vonderburg, Attorneys.

1921, April 14.—Waiver of Green Lawn Cemetery Association filed and appearance entered herein.

1921, April 14.—Waiver of John E. Sater, Trustee, filed and appearance entered herein.

1921, April 14.—Waiver of Helen Metcalf filed and appearance entered herein.

1921, April 14.—Waiver of William Metcalf filed and appearance entered herein.

1921, April 14.—Waiver of Board of Education filed and appearance entered herein by C. A. Leach, Attorney.

1921, April 14.—Waiver of Columbus Art Association filed and appearance entered herein by Arnold and Game, Attorneys.

1921, April 14.—Motion to advance filed.

1921, April 16.—Cause advanced for trial as entry.

[fol. 14] 1921, April 19.—Waiver of Y. M. C. A. and Y. W. C. A. filed and appearance entered.

1921, April 23.—Waiver of Ora Davis filed and appearance entered herein.

1921, April 28.—R. R. Walcutt appointed stenog. as Entry.

1921, May 6.—Reply brief filed.

1921, July 20.—Motion of Y. M. C. A. and Y. W. C. A. filed for a new trial.

1921, July 20.—Motion of Berea College filed for a new trial.

1921, July 20.—Motion of American Missionary Association filed for a new trial.

1921, July 20.—Motion for a new trial overruled. Ex. Notice of appeal and appeal bond fixed at \$500.00 and Executor's costs as entry.

IN THE COURT OF COMMON PLEAS

PETITION

1. Plaintiff is the duly appointed, qualified and acting executor of the last will and testament of Mary J. Sessions, deceased, a copy of which said will is hereto attached, marked Exhibit A, and made a part hereof. The defendants, Ora Davis, William Metcalf, Green Lawn Cemetery Association, M. B. Cooper, Annie Helwig, John D. Evans, The Board of Education of the Columbus, Ohio, School District, and The Columbus Art Association, are each named as legatees of specific legacies in said will. The defendants, M. B. Cooper, Annie Helwig, John D. Evans, Sarah Lewis, Mary Wright, Lynn Wright, Ellen Jones, Helen Metcalf, Juliette Sessions, Elizabeth Sessions and [fol. 15] Harriet Sessions, the latter of whom is now deceased and is represented herein by Elizabeth Sessions as Administratrix of her estate, are named in said will as devisees of specific devises. John E. Sater, Trustee, is named in said will as a trustee thereunder, of specific real estate. The Young Men's Christian Association of Columbus,

Ohio, The Young Women's Christian Association of Columbus, Ohio, Berea College and The American Missionary Association, are each residuary legatees named in said will, and are each entitled to a one-fourth share of the residuary estate of said testatrix. The defendants, The Young Men's Christian Association of Columbus, Ohio, and The Young Women's Christian Association of Columbus, Ohio, are each charitable, educational and religious corporations, incorporated and organized under the laws of the state of Ohio not for profit, are each residents and citizens of the state of Ohio, and are organized and operated exclusively for religious, charitable and educational purposes. Defendant, Berea College, is a corporation, incorporated and organized under the laws of the state of Kentucky for religious, educational and charitable purposes and not for profit, and is a resident and citizen of the state of Kentucky, and is organized and operated exclusively for religious, charitable and educational purposes. Defendant, The American Missionary Association, is a corporation, incorporated and organized under the laws of the state of New York for religious, educational and charitable purposes and not for profit, and is a resident and citizen of the state of New York, and is organized and operated exclusively for religious, charitable and educational purposes.

[fol. 16] 2. Plaintiff has paid on account of the Federal Estate Tax, to the Collector of Internal Revenue of the United States in and for the Eleventh District of Ohio, the sum of more than Thirty-one Thousand Dollars (\$31,000.00), under the United States Revenue Act of 1918, Title 4, known as the Estate Tax.

3. Plaintiff is in doubt as to the proper distribution of the assets of said estate among the devisees of specific devises, legatees of specific legacies and the residuary legatees, and therefore requests the direction and judgment of this court in respect to said estate, and the property thereof to be administered, and of the rights of the several defendants in interest, in the following respects, to-wit:

(a) Is the Federal Estate tax payable out of the "net estate" as defined in the Federal Estate Tax Law, and shall the amounts paid on account of said Federal Estate Tax be charged against the real estate specifically devised, the specific legacies mentioned in said will, or out of the general assets of the estate before making any distribution among the residuary legatees, to wit, The American Missionary Association, Berea College, The Young Men's Christian Association of Columbus, Ohio, and The Young Women's Christian Association of Columbus, Ohio?

(b) Shall the costs and expenses of administration be made a charge in part against said devisees and legatees of specific devises and legacies, or shall such expenses and costs be paid out of the general assets of the estate before making distribution to such residuary legatees?

(c) Shall the expenses of repairs, improvements, insurance, taxes and assessments, incurred since the death of testatrix, upon the real

[fol. 17] estate specifically devised, and the payment for services in collecting the rents, and making leases, and keeping said property in repair, and other similar services, be charged to the specific property on account of which such expenses were incurred, or otherwise?

(d) Are any of the four religious, charitable and educational organizations named as residuary legatees in said will, required to pay any amount under the collateral inheritance tax law of Ohio in force at the death of testatrix, towit, April 1st, 1919, and may the amount of the Federal Estate Tax be deducted from the estate before said inheritance tax attaches to devises and bequests.

Wherefore, plaintiff prays for the direction and judgment of the Court in the premises.

Vorys, Sater, Seymour and Pease, Attorneys for the Plaintiff.

STATE OF OHIO,
Franklin County, ss:

John E. Sater, being first duly sworn, says that he is the Executor of the Last Will and Testament of Mary J. Sessions, deceased, plaintiff in the above entitled action, and that the facts stated and allegations therein contained are true, as he verily believes.

John E. Sater.

Sworn to before me and subscribed in my presence, this 28th day of March, 1921. Lowrey F. Sater, Notary Public, Franklin County, Ohio. (Seal.)

[fol. 18]

EXHIBIT A TO PETITION

Last Will and Testament

I, Mary J. Sessions, of the City of Columbus, Franklin County, Ohio, being of sound and disposing mind and memory, do make, publish and declare this my last will and testament, hereby revoking and making null and void all other last wills and testaments by me heretofore made.

Item I. It is my will that all of my just debts and funeral expenses shall be paid by my executor hereinafter named as soon after my death as may be convenient for him to do so.

Item II. I give and bequeath to Ora Davis the sum of five thousand dollars (\$5,000.00).

Item III. I give and bequeath to William Metcalf, of Washington, D. C., the sum of five thousand dollars (\$5,000.00).

Item IV. I give and bequeath unto the Greenlawn Cemetery Association, of Columbus, Ohio, the sum of five hundred dollars

(\$500.00), to be invested by the trustees of said association, and the income derived therefrom to be expended in the care of the lot in Greenlawn Cemetery in which I shall be buried, according to the requirements adopted by the trustees of said association for the perpetual care of said lot in said Cemetery.

Item V. I give, devise and bequeath to each of my friends and faithful servants, M. B. Cooper, Annie Helwig and John G. Evans, the sum of five thousand dollars (\$5,000.00), in recognition of the [fol. 19] devoted manner in which they have served my interests and of the many kindnesses that I have received at their hands.

In addition thereto, I give, devise and bequeath to M. B. Cooper the property known as Numbers Thirty-one and Thirty-three (31 and 33) North Champion Avenue, in the City of Columbus, Ohio, beginning at a point in the west line of Champion Avenue two hundred twenty-six and thirteen hundredths (226.13) feet northerly from an iron pin at the intersection of the north line of Broad Street and the west line of Champion Avenue; thence northerly along the west line of Champion Avenue thirty-seven and eighty-two hundredths (37.82) feet to the corner of a parcel of land deeded to R. Clark Wright by Theodore Rhodes and wife February 24th, 1904; thence westerly along the south line of said Wright tract one hundred eighty-three and seven hundredths (183.07) feet to a point in the east line of a twenty (20) foot alley; thence southerly along the east line of said alley thirty-seven and eighty-two hundredths (37.82) feet to a point; thence easterly at right angles, to the place of beginning.

I give, devise and bequeath to Annie Helwig the properties known as Lots twenty-two (22) and twenty-three (23) of John M. Pugh's Subdivision of Lots one (1), two (2), three (3), four (4) and five (5) of S. Brush's Addition to the City of Columbus, Ohio, as the same are numbered and delineated upon the recorded plat thereof, of record in Plat Book 3, page 254, Recorder's Office, Franklin County, Ohio, which premises are situated on Latta Avenue, between Fair and Madison Avenues in said city.

[fol. 20] I give, devise and bequeath to John D. Evans the property known as Number four hundred and fifty-seven (No. 457) East Gay Street, in the City of Columbus, Ohio, which said premises are a part of John Morrison's Subdivision of lots north of Broad Street and west of Washington Avenue, and being a tract of land fronting thirty-two (32) feet on Gay Street and eighty (80) feet on Ninth Street.

Item VI. I give, devise and bequeath to Sarah Lewis (formerly Sarah Wright), Mary Wright Woodnut (now Mary Wright), Linn Wright (grandson of Horace Wright) and Ellen Jones (daughter of Horace Wright), share and share alike, the premises situated at the southeast corner of Long and High Streets, in the City of Columbus, Ohio, known as the "Sessions Block," and being Inlot three hundred and twenty-two (322) in said city, as the same is numbered and delineated upon the recorded plat thereof.

In the event I should survive any of said beneficiaries named in this item of my will, who, at the time of his or her death should leave no lawful issue surviving me, it is my will and I hereby direct, that the property so devised to any such beneficiary or beneficiaries, shall pass to and vest absolutely, share and sahre alike in such of said beneficiaries as shall survive me.

Item VII. I give, devise and bequeath the property known as the "Johnson Building," situated on the west side of High Street, in Columbus, Ohio, and being Inlot number two hundred and sixty-two (No. 262) in said city, as the same is numbered and delineated upon the recorded plat thereof, unto John E. Sater, of Columbus, [fol. 21] Ohio, Trustee, to be held by him in trust for the following uses and purposes, to-wit:

To receive and collect the rents, issues, income and profits thereof, and after paying therefrom the insurance, taxes, assessments, repairs and charges upon said property and the expenses of said trust, to pay one-half of the net income arising therefrom to Helen Metcalf, of Washington, D. C., in quarterly installments, for and during the full term of her natural life.

Upon the death of the said Helen Metcalf, I hereby authorize and direct the said Trustee to pay from the one-half of the said property (either out of any unpaid money that may be due and owing said Helen Metcalf at the time of her death or from such income as may accrue after her death) the expenses of her last sickness and burial, and if necessary, to provide a suitable tombstone for her grave. Should it be the desire of said Helen Metcalf, or her family, that her body be buried in Greenlawn Cemetery, in which my body is buried, it is my will that her body be there buried.

I authorize and direct said Trustee to pay the other half of the net income arising from said property, share and share alike, in quarterly installments, to Juliet Sessions (a teacher in the public schools of Columbus, Ohio), Elizabeth Sessions (her sister), and Harriet Sessions, of Mount Holyoke, Massachusetts, for and during the lifetime of Helen Metcalf; and upon the death of Helen Metcalf, and the payment of the amounts herein authorized in connection with her last sickness and burial, including the cost of a tomb- [fol. 22] stone, or in case I should survive the said Helen Metcalf, it is my will and I hereby direct that the premises described in this item of my will shall, as soon thereafter as it may be convenient to do so, be conveyed in fee by said Trustee to Juliet Sessions, Elizabeth Sessions, and Harriet Sessions, at which time the trust herein created shall cease, and said Trustee shall then be released from any and all liability therein, and said property shall vest absolutely and in fee simple, share and share alike, in the said Juliet Sessions, Elizabeth Sessions and Harriet Sessions.

In event said Helen Metcalf should survive any of the three (3) beneficiaries named in this item of my will, who, at the time of her death should leave no lawful issue surviving her, it is my will and I hereby direct that the survivors, or survivor, as the case may be, of said three (3) beneficiaries, shall have and receive such portion

of the rents and profits hereinabove provided, and such portion of the real estate as would have been received but for the death of such other beneficiary or beneficiaries as the case may be.

Item VIII. I give and bequeath unto the Public School Library, of Columbus, Ohio, all the books and pamphlets which now go to make up my library.

Item IX. I give and bequeath unto the Columbus Art School all of my prints, engravings and paintings.

Item X. All the rest, residue and remainder of my estate and property, real, personal and mixed, of every nature and description, or wheresoever situate, including any lapsed legacies of which I may die possessed, or to which I may in any way be entitled, I give, [fol. 23] devise and bequeath to the Young Men's Christian Association, of Columbus, Ohio, the Young Women's Christian Association, of Columbus, Berea College, and the American Missionary Association, to be divided equally among them, share and share alike, by my executor hereinafter named. The share to which each of the beneficiaries named in this item of my will shall receive, shall be held, used and applied by each of said corporations in such way or manner as may in the judgment of the legally qualified and acting officers of each of said respective corporations best tend to promote and advance the objects defined in their articles of incorporation.

Item XI. In case I should die within one (1) years from this date, it is my will, and I hereby direct, that all the property devised by Item X of this my last will, shall pass to and become the absolute property, in fee simple, share and share alike, of Sarah Lewis (formerly Sarah Wright), Mary Wright Woodnut (now Mary Wright), Item X of this my last will, shall pass to and become the absolute Linn Wright (grandson of Horace Wright) and Helen Jones (daughter of Horace Wright), the beneficiaries named in Item VI of this my last will.

Item XII. I nominate and appoint John E. Sater, of Columbus, Ohio, as the Executor of this, my last Will and Testament, hereby authorizing and empowering said executor to reduce to cash all the property mentioned in Item X of this, my last Will, and to sell, either at public or private sale, on such terms and conditions and at such price or prices, and to such person or persons, as, in his judgment, may be proper, all or any of my real or personal property so mentioned in Item X of this my last will; and to execute and deliver [fol. 24] any and all deeds and conveyances (with or without covenants of warranty as my Executor may deem best) and other papers necessary and proper to vest in the purchaser or purchasers a good title thereto, which purchaser or purchasers shall not be liable for the application of the purchase money of the premises so sold; and to make division and partition of the proceeds arising from the sale of my residuary estate among my residuary legatees within two (2) years after my death, and to control and manage my said residuary estate in the same manner as I could do if living.

I authorize and empower said executor to compromise, adjust, release and discharge, in such manner as he may deem proper, any debts and claims due to or owing by me; to complete or rescind any contracts of whatsoever kind entered into by me, and to collect any and all rents, interest and profits and income of every character arising out of or derived from my residuary estate.

Item XIII. Should any of the beneficiaries under this Will object to the probate thereof, or in any wise directly or indirectly contest, or aid in contesting the same, or any of the provisions thereof, or the distribution of my estate hereunder, or any part hereof, then and in that event, I annul any bequests herein made to any such beneficiary, and it is my will that such beneficiary shall be absolutely barred and cut off from any share in my estate.

In Witness Whereof, I have hereunto subscribed my name to this, my last Will and Testament, at Columbus, Ohio, this 17th day of September, in the year of our Lord one thousand nine hundred and fourteen (1914).

(Signed) Mary J. Sessions.

[fol. 25] The foregoing instrument was signed, acknowledged and declared by the said Mary J. Sessions, as and for her last Will and Testament in our presence, who, in her presence, and at her request, and in the presence of each other, have this day signed our names as witnesses.

(Signed) L. F. Sater, Residing at Columbus, Ohio. (Signed)
E. L. Pease, Residing at Columbus, Ohio.

IN THE COURT OF COMMON PLEAS

ENTRIES OF APPEARANCE

The undersigned defendants in the above entitled case waive the issuance and service of summons, and voluntarily enter their appearance herein, and consent to the immediate hearing of said cause.

Mary Wright, L. W. Wright, Helen W. Jones, Sarah Lewis.

Filed April 9, 1921.

Similar Entries of Appearance were duly filed by the following parties: M. B. Cooper, John D. Evans, Annie Helwig. Filed April [fol. 26] 9, 1921. Juliette Sessions, Elizabeth Sessions, Elizabeth Sessions, Executrix for Harriet E. Sessions, per Juliette Sessions. Filed April 9, 1921. American Missionary Association, By Irving C. Gaylord, Treasurer. Edward P. Lyon, Chairman Com. on Finance. Filed April 13, 1921. Berea College, By Mallon & Vordenberg, Attorneys. Filed April 13, 1921. Green Lawn Cemetery Association, By J. B. Wilcox, Secretary. Filed April 14, 1921. John

E. Sater, Trustee under the will of Mary J. Sessions, deceased. Filed April 14, 1921. Helen Metcalf. Filed April 14, 1921. William [fol. 27] P. Metcalf. Filed April 14, 1921. The Board of Education of the Columbus, Ohio, School District, By Charles A. Leach, City Attorney, and Attorney for said Board. Filed April 14, 1921. The Columbus Art Association, By Arnold & Game, R. H. Platt. Filed April 14, 1921. Ora Davis. Filed April 23, 1921.

ENTRY OF FINDINGS AND JUDGMENT—Filed July 20th, 1921

This day this cause came on to be heard upon the petition and the copy of the will attached thereto, which was agreed to be a full and true copy of said will, and all of the defendants having voluntarily entered their appearance in said cause, the same was argued by counsel and submitted to the court, and the court being fully advised, finds that the federal estate tax is a debt against the estate of said decedent which must be paid by the Executor out of the general assets of the estate before making any distribution among the residuary legatees, namely, American Missionary Association, Berea College, The Young Men's Christian Association of Columbus, Ohio, The [fol. 28] Young Women's Christian Association of Columbus, Ohio; that the legatees and devisees in the will who received specific legacies and devises under the will, are entitled to receive their respective bequests and devises in full, and free from the payment of said estate tax, unless necessary to pay debts, and that the Executor shall not charge to or collect from any of the legatees or devisees under the will, other than said residuary legatees, any amounts paid by him for said federal estate tax.

The court further finds that the costs and expenses of administration are payable out of the general funds in the hands of the executor and are not chargeable against devisees and legatees of specific devises and bequests, and the residuum only, after paying all costs and expenses, is payable to the residuary legatees; but the expenses of repairs, improvements, insurance, taxes and assessments incurred since the death of the testatrix upon the real estate specifically devised, and the charges for services in collecting the rents and making the leases and keeping the property in repair, and other similar services respecting said real estate, are not charges against the general assets in the hands of the executor, but the Executor should charge to and collect from the respective devisees of specific real estate the expenses so incurred by him and the charges for his services on behalf of the respective devisees, each devisee to pay to the Executor the amount of expense incurred and the charge for services made by Executor with respect to such devisee's property.

Said petition is dismissed as to the request marked "D," relating to the collateral inheritance tax law of Ohio, on the ground that this [fol. 29] court in this proceeding has no jurisdiction of such questions.

To which findings and judgment of the court said defendants, The American Missionary Association, Berea College, The Young Men's Christian Association of Columbus, Ohio, and the Young Women's Christian Association of Columbus, Ohio, and each of them jointly and severally except.

And thereupon the defendants, The American Missionary Association, Berea College, The Young Men's Christian Association of Columbus, Ohio, and The Young Women's Christian Association of Columbus, Ohio, each filed its separate motion for a new trial and the same was submitted to the Court, and the Court overruled each of said motions, to which each of the parties at the time excepted.

The defendants, The American Missionary Association, Berea College, The Young Men's Christian Association of Columbus, Ohio, and The Young Women's Christian Association of Columbus, Ohio, hereby jointly and each of them severally give notice of their intention to appeal this case to the Court of Appeals; and the Court fixes the penalty of the appeal bond, to be given in case said appeal is perfected, at \$500.00.

It is ordered and adjudged by the Court that said Executor pay the costs of this action out of the general assets of said estate.

[fol. 30]

IN COURT OF COMMON PLEAS

MOTION OF BEREAL COLLEGE TO SET ASIDE THE FINDINGS AND JUDGMENT OF THE COURT HEREIN AND FOR A NEW TRIAL

Now comes the defendant, Berea College, and moves the court to set aside its findings and judgment herein and for a new trial on the following grounds, viz.:

1. That said findings and judgment are not supported by the facts stated in the petition herein and in the last will of Mary J. Sessions, deceased, mentioned in said petition, or by the facts stated either in said petition or in said will.

2. That said findings and judgment are contrary to law.

3. That said findings and judgment should have been in favor of this defendant and of each of the other defendants who are residuary devisees and legatees under the last will of said Mary J. Sessions, deceased.

Booth, Keating, Pomerene & Boulger, Attorneys for Berea College.

IN COURT OF COMMON PLEAS

MOTION OF THE AMERICAN MISSIONARY ASSOCIATION TO SET ASIDE
THE FINDINGS AND JUDGMENT OF THE COURT HEREIN AND FOR A
NEW TRIAL

Now comes the defendant, The American Missionary Association, and moves the court to set aside its findings and judgment herein and for a new trial on the following grounds, viz.:

[fols. 31 & 32] 1. That said findings and judgment are not supported by the facts stated in the petition herein and in the last will of Mary J. Sessions, deceased, mentioned in said petition, or by the facts stated either in said petition or in said will.

2. That said findings and judgment are contrary to law.

3. That said findings and judgment should have been in favor of this defendant and of each of the other defendants who are residuary devisees and legatees under the last will of said Mary J. Sessions, deceased.

Booth, Keating, Pomerene & Boulger, Attorneys for The American Missionary Association.

IN COURT OF COMMON PLEAS

MOTION OF THE YOUNG MEN'S CHRISTIAN ASSOCIATION AND THE
YOUNG WOMEN'S CHRISTIAN ASSOCIATION FOR NEW TRIAL

Now come the defendants, The Young Men's Christian Association and The Young Women's Christian Association, and severally move the court to set aside its findings and judgment herein and for a new trial of this cause on the ground that said findings and judgment are not supported by sufficient evidence and are contrary to law.

Webber & Jones and C. A. McCleary, Morton, Irvine & Blanchard, Attorneys for said Defendants.

[fol. 33] SUPREME COURT OF THE STATE OF OHIO

[Title omitted]

CERTIFICATE OF THE CHIEF JUSTICE OF THE SUPREME COURT OF
OHIO [Omitted; printed side p. e]

[fol. 34] TRANSCRIPT OF DOCKET ENTRIES [Omitted; printed side p. a]

[fol. 35] TRANSCRIPT OF JOURNAL ENTRIES [Omitted; printed side p. c]

[fol. 36] CLERK'S CERTIFICATE [Omitted; printed side p. d]

[fol. 37-41] OPINION OF SUPREME COURT OF OHIO—Decided December 29, 1922 [omitted; printed side p. f]

[fol. 42] WRIT OF CERTIORARI AND RETURNS—Filed Sept. 24, 1923

UNITED STATES OF AMERICA, SS:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Ohio, Greeting:

Being informed that there is now pending before you a suit in which the Young Men's Christian Association of Columbus, Ohio, Berea College, and the American Missionary Association, are plaintiffs in error, and Ora Davis et al. are defendants in error, No. 17369, which suit was removed into the said Supreme Court, by virtue of a writ of error to the Court of Appeals of Franklin County, Ohio, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the United [fol. 43] States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the eighteenth day of September, in the year of our Lord one thousand nine hundred and twenty-three.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

[fol. 44] [File endorsement omitted.]

[fol. 45] IN THE SUPREME COURT OF THE STATE OF OHIO

No. 17369

THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF COLUMBUS, OHIO; Berea College, and The American Missionary Association, Petitioners,

vs.

ORA DAVIS, WILLIAM METCALF, GREENLAWN CEMETERY ASSOCIATION, M. B. Cooper, Annie Helwig, John D. Evans, Sarah Lewis, Mary Wright, Lynn Wright, Ellen Jones, John E. Sater, Trustees under the Will of Mary J. Sessions, Deceased, Helen Metcalf, Juliette Sessions, Elizabeth Sessions, Elizabeth Sessions as Administratrix of the Estate of Harriet Sessions, Deceased, the Board of Education of the City of Columbus, Ohio, School District, the Columbus Art Association, The Young Women's Christian Association, and John E. Sater as Executor of the Last Will and Testament of Mary J. Sessions, Deceased, Respondents.

STIPULATION—Filed Sept. 21, 1923

It is hereby stipulated between the Young Men's Christian Association, of Columbus, Ohio, Berea College, and The American Missionary Association, Plaintiffs in error, against Ora Davis, William Metcalf, Greenlawn Cemetery Association, M. B. Cooper, Annie Helwig, John D. Evans, Sarah Lewis, Mary Wright, Lynn Wright, Ellen Jones, John E. Sater, Trustee under the will of Mary J. Sessions, Deceased, Helen Metcalf, Juliette Sessions, Elizabeth Sessions, Elizabeth Sessions as Administratrix of the Estate of Harriet Sessions, Deceased, The Board of Education of the City of Columbus, Ohio, School District, The Columbus, Art Association, The Young Women's Christian Association, and John E. Sater as Executor of the last will and testament of Mary J. Sessions, Deceased, Defendants in error, that the transcript already filed in the office of the Clerk of the Supreme Court of the United States with the petition for writ of certiorari be taken as a return to said writ dated the 9th day of June, 1923.

Dated this 9th day of June, 1923.

Frank Davis, Jr., Guy W. Mallon, Henry A. Williams; James I. Boulger, Attorneys for Petitioners. Arthur L. Vorys, Attorney for Respondents.

[fol. 47]

SUPREME COURT OF OHIO

UNITED STATES OF AMERICA,
State of Ohio, ss:

In obedience to the command of the within writ of certiorari, and in pursuance of the stipulation of the parties, a full, true and complete

copy of which is hereto attached, I hereby certify that the transcript of record filed with the petition for a writ of certiorari in the case of the Young Men's Christian Association, of Columbus, Ohio, et al., vs. Ora Davis et al., No. 17369, is a full, true and complete transcript of all pleadings, proceedings and record entries in said case as mentioned in the certificate thereto.

In testimony whereof, I hereunto subscribe my name and affix the seal of the Supreme Court of the State of Ohio at my office in the City of Columbus, Ohio, 21st day of September, 1923.

Seba H. Miller, Clerk of the Supreme Court of the State of Ohio. [Seal of the Supreme Court of the State of Ohio.]

STATE OF OHIO,
City of Columbus, ss:

I, Seba H. Miller, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the above and foregoing is a full, true and complete copy of the stipulation of the parties as to return to be made to the writ of certiorari in the case of The Young Men's Christian Association of Columbus, Ohio, et al., Petitioners, v. Ora Davis et al., Respondents, No. 17369, as fully and completely as said stipulation remains on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the State of Ohio at my office in the City of Columbus, Ohio, this 21st day of September, 1923.

Seba H. Miller, Clerk of the Supreme Court of the State of Ohio. [Seal of the Supreme Court of the State of Ohio.]

[fol. 48] [File endorsement omitted.]